

**These changes have not been integrated into the basic publication. The reader must use this IC in conjunction with the publication and these changes take precedence.**

**\*SUMMARY OF CHANGES**

This interim change implements new requirements that clarify eligibility for legal assistance to members on Active Guard/Reserve (AGR) tours, removes the responsibility of installation tax assistance program from commanders to staff judge advocates, clarifies the responsibility to provide tax assistance on prior year returns throughout the year, and updates the web address to the legal assistance website. References to the Civil Law and Litigation Directorate, Air Force Legal Services Agency (AFLSA/JAC) as certifying official should be changed to the Commander, Air Force Legal Operations Agency (AFLOA/CC); references to the Legal Assistance and Preventive Law Division, Air Force Legal Services Agency (AFLSA/JACA) should be changed to The Judge Advocate General's School, Air Force Legal Operations Agency (AFLOA/AFJAGS) throughout the publication; references to the Soldiers' and Sailors' Civil Relief Act (SSCRA) should be changed to the Servicemembers' Civil Relief Act (SCRA) throughout the publication. A margin bar indicates newly revised material.

\*1.3.1.1. Air Reserve Component members performing Active Guard/Reserve (AGR) tours, including those under 10 USC § 10211, 10 USC § 12310 or 32 USC § 502(f), are eligible for legal assistance.

\*1.4.14.1. Under the legal assistance program, Air Force attorneys provide advice and assistance on legal matters pertaining to federal, state, and local tax problems. Air Force attorneys also provide assistance filing current and prior year individual income tax returns throughout the year. Examples of this type of legal assistance include responding to letters from the IRS or state tax authorities, advising on responding to audits, and assisting in non-income tax matters, like real estate taxes or personal property taxes. Bases report this type of legal assistance in WebLIONS (see paragraph 1.9. of this instruction).

\*1.4.14.2. In addition to the service provided under paragraph **1.4.14.1.**, Air Force tax assistance programs (which remain separate and distinct from the legal assistance program) involve JA staff, detailed service members, and base volunteers preparing and filing federal and state income tax returns for those eligible to receive this assistance. SJAs will supervise and manage these programs at their bases, exercising discretion concerning the scope of assistance provided, eligible beneficiaries, and sources of support for training and electronic filing. All Air Force bases will operate individual income tax assistance programs, to include electronic filing services.

\*1.4.14.2.2. Eligible beneficiaries include active duty service members and their dependents and retirees and their dependents. Additionally, SJAs may authorize

preparation and electronic filing of tax returns for federal civilian employees, to the extent permitted by the IRS Volunteer Income Tax Assistance (VITA) program. In making this determination, SJAs must consider whether the resources available to the installation tax program are sufficient to support the increased demands such an extension of support would entail. When they seek tax assistance, federal civilian employees must adhere to applicable rules concerning use and accounting of their time.

\*3.5.1. AFLOA/AFJAGS' web site provides information on legal assistance subject areas covered under the legal assistance program, field guidance, and preventive law updates. Access the site at: <https://aflsa.jag.af.mil/AF/lynx/afjags/>

**27 OCTOBER 2003**



**Law**

**LEGAL ASSISTANCE, NOTARY, AND  
PREVENTIVE LAW PROGRAMS**

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This instruction implements AFD 51-5, *Military Legal Affairs*, and DoDD 1350.4, *Legal Assistance Matters*, April 2001. It describes the Air Force legal assistance, notary, and preventive law programs. It implements 10 U.S.C. 1044, which authorizes legal assistance as resources permit; 10 U.S.C. 1044a, which authorizes certain military personnel to act as notaries public and identifies the eligible beneficiaries for military notary services; 10 U.S.C. 1044b, which establishes the legal effect of military powers of attorney without regard to state law, exempting them from any requirement as to form, substance, formality, or recording; 10 U.S.C. 1044c, which establishes the legal effect of military advance medical directives, exempting them from any requirement as to form, substance, formality, or recording; and 10 U.S.C. 1044d, which defines the requirements for preparation of military testamentary instruments and establishes their legal effect, exempting them from any requirement as to form, formality, or recording.

**SUMMARY OF REVISIONS**

**This document is substantially revised and must be completely reviewed.**

This document has changed significantly in form and content. It aims to provide Staff Judge Advocates and legal assistance attorneys a broader description of the subject areas they will encounter and the tools available to facilitate their accomplishment of the mission. Use of the confusing term “mission-related legal assistance” is eliminated in exchange for the more descriptive and definable “mobilization- and deployment-related legal assistance.” Staff Judge Advocates must give highest priority to providing mobilization- and deployment-related legal assistance, which is defined not by the subject matter of the client’s concern but by the relationship between command readiness and resolution of the member’s specific legal issue. Added to the categories of beneficiaries eligible for legal assistance are officers of the Public Health Service, pursuant to 10 U.S.C. §1044(a)(3); members of Reserve components following release of active duty of more than 30 days duration, pursuant to 10 U.S.C. §1044(a)(4), for whom legal assistance may be provided for a period not less than twice the length of the period of active duty service; foreign military personnel and their dependents assigned in the United States and its territories under offi-

cial orders for purposes of combined missions with United States personnel and for training in programs sponsored in the United States; and civilian employees and civilian contractor personnel deploying to or in a theater of operations with assistance limited to wills and powers of attorney. Authority for legal assistance for the latter beneficiaries derives from DoDI 1400.32 (civilian employees) and DoDI 3020.37 (defense contractor personnel). This document provides a broader discussion of the types of legal services most commonly provided at bases, with references to applicable statutes, regulatory authority, or informational materials. Specific subject areas treated include wills and military testamentary instruments, advance medical directives, powers of attorney, dependent care issues, Soldiers and Sailors Civil Relief Act, veterans' reemployment rights under the Uniformed Services Employment and Reemployment Rights Act, casualty affairs, landlord/tenant issues, consumer affairs, and tax assistance. The instruction aligns guidance on ethical responsibilities and rules with TJAG Policy Memorandum TJS-2, *Air Force Rules of Professional Conduct and Standards of Civility in Professional Conduct*; TJS-3, *The Air Force Standards of Criminal Justice*; and TJS-5, *TJAGD Professional Responsibility Program*. Provides clearer guidance on procedures and options when referring clients to the civilian bar for assistance in matters beyond either the scope of legal assistance or the expertise of the military attorney. Provides detailed guidance on the acceptance of volunteer legal services consistent with 10 U.S.C. §1588(a)(5), DoDI 1100.21, *Volunteer Services in the Department of Defense*, and TJS-8, *Use of Legal Services Volunteers*. Emphasizes the requirement to use WebLIONS to track and manage legal assistance workload with citation to the program's website. Summarizes the legal readiness briefing requirement for personnel subject to deployment, citing subject areas bases should cover and the reporting requirement during the 15-month AEF cycle. Describes the licensing requirement for DL Wills - each computer using the program requires a license. Expands guidelines governing operation of the notary program at base-level. Provides greatly expanded guidance on the establishment and operation of the preventive law program, emphasizing its vital role in promoting command readiness.

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## Chapter 1

### LEGAL ASSISTANCE PROGRAM

**1.1. Purpose.** Legal offices provide legal assistance in connection with personal civil legal matters to support and sustain command effectiveness and readiness. Under 10 U.S.C. §1044, the ability to offer legal assistance and legal services to the eligible categories of personnel is contingent upon the availability of legal staff resources and expertise. Although legal assistance is not separately funded, it has been provided for members of the armed forces since 1943 and is now perceived as one of the benefits of military service. Therefore, Staff Judge Advocates (SJAs) should make every effort to satisfy legal assistance needs, assigning mobilization- and deployment-related legal assistance the highest priority. Mobilization- and deployment-related legal assistance is not determined by the subject matter of legal assistance provided, but by the relationship between Command readiness and solving the member's specific legal issue(s). For example, although wills and powers of attorney are generally associated with pre-deployment legal assistance, a landlord-tenant issue is also mobilization- and deployment-related if it would have an adverse effect on the member's ability to perform his or her duties if not solved prior to deployment.

**1.2. Scope.** Legal assistance establishes an attorney-client relationship and consists of Air Force attorneys providing advice on personal, civil legal matters to eligible beneficiaries. For any other legal concern, the Air Force remains the client. On such other matters, do not provide advice to, or enter into an attorney-client relationship with, individuals or entities. Air Force attorneys, acting in an official capacity, may not enter into an attorney-client relationship in the following areas:

- 1.2.1. Official matters in which the Air Force has an interest or is involved in the final resolution.
- 1.2.2. Criminal issues under the *Uniform Code of Military Justice (UCMJ)*, or any local, state or federal criminal law.
- 1.2.3. Standards of ethical conduct issues.
- 1.2.4. Law of Armed Conflict (LOAC) issues.
- 1.2.5. Issues involving personal commercial enterprises (unless such advice is related to the Soldiers' and Sailors' Civil Relief Act [SSCRA]).
- 1.2.6. Legal issues or concerns raised on behalf of third parties, even if the third party is eligible for legal assistance.
- 1.2.7. Drafting or reviewing real estate sale or closing documents, separation agreements or divorce decrees, and inter vivos (living) trusts. This limitation does not preclude a general review to identify potential problems for which the client may require more expert assistance or to protect a client from signing an unconscionable agreement. If the SJA determines that an attorney in the office, whether active duty or reservist, has the expertise to draft or review and edit these documents, then the SJA may authorize that attorney to do so.
- 1.2.8. Private organizations (e.g., spouses clubs and squadron booster clubs) that have been chartered by appropriate authority to function on Air Force installations. Although prohibited from entering into an attorney-client relationship with private organizations, under the auspices of the Civil Law program Air Force attorneys may provide legal guidance and advice through the base private organiza-

tions monitor to ensure private organizations are properly chartered and comply with pertinent statutes and regulations.

1.2.9. Representation of the client in a court or administrative proceeding.

**1.3. Eligibility for Legal Assistance.** Among the eligible beneficiaries outlined in the subparagraphs immediately following, the highest priority shall be given to Air Force personnel who need mobilization- or deployment-related legal assistance that facilitates Command readiness. Assigning this priority is especially important when the deployment is on short notice. The following categories of personnel are eligible for legal assistance subject to the availability of legal staff resources and expertise.

1.3.1. Members of the armed forces who are on active duty, including reservists, National Guard members, and contract ROTC cadets on federal active duty under Title 10, United States Code.

1.3.2. Members entitled to retired or retainer pay or equivalent pay and former members of reserve components entitled to retired pay under 10 U.S.C. §12731 (formerly 10 U.S.C. §1331). Persons eligible under this provision include members and former members receiving retired pay as a result of retirement due to permanent disability or placement on the temporary disability retired list.

1.3.3. Officers of the commissioned corps of the Public Health Service who are on active duty or entitled to retired or equivalent pay.

1.3.4. Members of reserve components not covered in paragraph 1.3.1. and 1.3.2. following release from active duty under a call or order to active duty for more than 30 days issued under mobilization authority (as determined by the Secretary of Defense). Eligibility for such legal assistance shall begin on the date of the release and continue for a period of time equal to twice the length of the period served on active duty under that call or order to active duty. SJAs may require reservists and National Guard members to present a copy of the pertinent orders at the legal office to verify eligibility for legal assistance under this provision.

1.3.5. Dependents of members and former members listed in 1.3.1., 1.3.2., 1.3.3., and 1.3.4., who are entitled to an identification card.

1.3.6. Civilian employees deploying to or in a theater of operations are furnished the opportunity and assistance to prepare and execute wills and any necessary powers of attorney, in accordance with DoDI 1400.32, *DoD Civilian Work Force Contingency and Emergency Planning Guidelines and Procedures*.

1.3.7. Civilian contractor personnel deploying to or in a theater of operations may be furnished the opportunity and assistance to prepare and execute wills and powers of attorney in accordance with DoDI 3020.37, *Continuation of Essential DoD Contractor Services During Crises*.

1.3.8. Inactive Reservists or National Guard Members. For members of the reserve components subject to federal mobilization (National Guard, Ready Reserves, contract ROTC cadets) in an inactive status, provide mobilization- and deployment-related legal assistance. Subject areas include wills, advance medical directives, powers of attorney, protections and responsibilities under the Soldiers' and Sailors' Civil Relief Act and Uniformed Services Employment and Reemployment Rights Act, and notary services. This list is not exhaustive. SJAs retain discretion to determine whether the circumstances of a reserve component member warrant the provision of legal assistance to ensure readiness for mobilization and deployment. Provide no other legal assistance to members of the reserve components until the member is on federal active duty under Title 10, United States Code, and for the

period of time after release from active duty noted in paragraph 1.3.4. Dependents of reserve component personnel are not authorized legal assistance except during the time the reserve component member is on federal active duty under Title 10, United States Code, or for the period of time after release from active duty noted in paragraph 1.3.1.4.

1.3.9. Civilian employees of the Department of Defense and the military departments assigned outside the United States and its territories and their dependents residing with them.

1.3.10. Foreign military personnel, and their dependents, assigned to the United States either permanently or temporarily under official orders for purposes of combined missions with United States personnel and for training in programs sponsored by the United States. This assistance does not extend to foreign military personnel present in the United States solely to carry out another nation's unilateral mission, such as use of ranges on a United States installation to test the foreign nation's weapons system without the participation of United States personnel in the training.

1.3.10.1. Assistance provided under this section should be limited in scope to matters involving the interpretation or application of United States domestic law only. Such matters involve issues pertinent to a person's relocation and requirement to be present in the United States to carry out official duties. Examples include but are not limited to landlord-tenant, consumer affairs, driver's licenses, customs, tax relief, and similar assistance. Assistance should not be provided for matters implicating the laws of the sending state, such as wills and domestic relations, nor should any legal assistance be provided on matters that would impact the person's status in the United States.

1.3.11. Unique Situations. When it benefits the command, SJAs may authorize legal assistance to persons not specifically identified above as an eligible beneficiary. These situations must involve people who have a present, past and future military obligation relevant to the legal problem. Examples are reservists or National Guard members who have demobilized; Reserve Office Training Corps Cadets who must meet dependent care responsibilities; and next-of-kin of someone killed on active duty.

**1.4. Legal Services Provided.** Legal assistance may be provided for personal civil legal matters subject to the availability of legal staff resources and expertise. The subparagraphs in this section provide guidance and context for personal civil legal matters commonly encountered in the legal assistance program. They are not intended as an exhaustive list of the subject matter on which clients may receive legal assistance.

1.4.1. Wills. Wills distribute the property of the testator/testatrix after death. All Commanding Officers shall urge military personnel to seek legal counsel to assess their need for a will before mobilization, deployment, or similar activities. However, any testamentary instrument, to be legally effective, must be the free and voluntary act of the person making it.

1.4.1.1. The basic will is the primary document attorneys in the Office of the Judge Advocate General (OTJAG) will prepare for legal assistance clients. This document effectively serves the needs of the vast majority of our clients, including the following: statement of residency; payment of final expenses of the estate; specific and residuary bequests with contingent beneficiaries; distributions to minors and appointment of guardians of minors; and appointment of executor/executrix and alternates. Additionally, the basic will contains the simplest of trusts, allowing assets intended for a minor beneficiary to be passed in trust to a trustee named in the will, who generally serves at no cost to the estate or the minor's assets. If the basic wills legal assistance attorneys provide do not contain these simple trust provisions, state probate courts will appoint trustees to act



on behalf of minor beneficiaries at a cost to the estate. The will-drafting program employed by legal offices must be able to prepare these simple testamentary trusts. When used properly, the *DL Wills* program will include the required provisions in the will.

1.4.1.2. Every will shall be prepared and executed as a military testamentary instrument. In accordance with 10 U.S.C. 1044d and DoDD 1350.4, *Legal Assistance Matters* (April 2001), a military testamentary instrument shall:

1.4.1.2.1. Be executed by the testator/testatrix (or, if the testator/testatrix is unable to execute the instrument personally, executed in the presence of, by the direction of, and on behalf of the testator/testatrix).

1.4.1.2.2. Be executed in the presence of a military legal assistance counsel as presiding attorney.

1.4.1.2.3. Be executed in the presence of at least two disinterested witnesses (in addition to the presiding attorney), each of whom attests to witnessing the testator's/testatrix's execution of the instrument by signing it.

1.4.1.2.4. Include a statement of preamble in form and content, substantially similar to the following:

"This is a MILITARY TESTAMENTARY INSTRUMENT prepared pursuant to section 1044d of Title 10, United States Code, and executed by a person authorized to receive legal assistance from the Military Services. Federal law exempts this document from any requirement of form, formality, or recording that is provided for testamentary instruments under the laws of a State, the District of Columbia, or a commonwealth, territory, or possession of the United States. Federal law specifies that this document shall receive the same legal effect as a testamentary instrument prepared and executed in accordance with the laws of the State in which it is presented for probate. It shall remain valid unless and until the testator/testatrix revokes it."

Programs such as *DL Wills* may produce preambles for wills substantially similar to the above. In the event the will preparation program used by the legal office does not include an acceptable preamble, insert a verbatim copy of this preamble at the top of the first-page of each will prepared.

1.4.1.2.5. Include a self-proving affidavit. A self-proving affidavit is a notarized, written declaration signed by each witness and the testator/testatrix that attests to the circumstances under which the will was executed. Include (or have attached to the will), a self-proving affidavit, in form and content, substantially similar to the following:

"We, the testator/testatrix and the witnesses, whose names are signed to the attached or foregoing instrument, being first duly sworn, do hereby declare to the undersigned authority that in the presence of a military legal assistance counsel and the witnesses the testator/testatrix signed and executed the instrument as the [testator's/testatrix's] military testamentary instrument and that [he][she] had signed willingly (or willingly directed another to sign for [him][her]), and that [he][she] executed it as [his][her] free and voluntary act for purposes therein expressed. It is further declared that each of the witnesses, in the presence and hearing of the testator/testatrix and a military legal assistance counsel, signed the military testamentary instrument as witness and that to the best of [his][her] knowledge the testator/testatrix was at

that time eighteen years of age or older or emancipated, of sound mind, and under no constraint or undue influence."

Programs such as *DL Wills* may produce self-proving affidavits substantially similar to the above. Self-proving affidavits that address all the basic elements of the above affidavit in a different order or that use different wording for some elements are considered substantially similar to the above. If the program used does not produce substantially similar language, use the above language verbatim to prepare the self-proving affidavit for each execution.

1.4.1.3. Will questionnaires or worksheets should be used to record basic information as to domicile, family situation, designation of guardians and personal representatives, the nature and approximate value of assets owned so as to establish federal estate tax thresholds, and the testator's/testatrix's intentions for disposition of property and other assets. The questionnaire should be the starting point for the individual interview with the client. See the AFLSA/JACA website at [https://aflsa.jag.af.mil/GROUPS/AIR\\_FORCE/JAC/jaca/index.html](https://aflsa.jag.af.mil/GROUPS/AIR_FORCE/JAC/jaca/index.html) for sample will questionnaires.

1.4.1.4. Due to the potential for conflicts of interest during the representation, legal assistance attorneys should consider using a dual representation letter when providing advice on and drafting wills and related documents for married couples. The letter accomplishes a number of key objectives in the dual representation situation. It informs the married couple of the scope of matters that will be covered in the representation. It also alerts the married couple that information received from either client during the representation of both shall not be confidential between them. Finally, the dual representation letter advises the married couple that the attorney may withdraw from representation of either client and advise both to obtain individual representation in the event of a conflict of interest between them. If dual representation letters are used, legal offices should retain them in a file dedicated to that purpose for a period of at least 1 year from the date the clients endorse the letter. A sample dual representation letter is at **Attachment 2** to this instruction.

1.4.1.5. Will executions. The signing of the will and self-proving affidavit represents one of the most significant legal events a client will undertake. Conduct the execution ceremony with the dignity appropriate to the significance of these documents to the client and his or her family. To assist offices in this process, **Attachment 3** to this instruction provides a Standard Operating Procedure for use in the execution of wills as military testamentary instruments. The procedure outlines the requirements for the execution ceremony and the questions to be asked of the testator/testatrix and witnesses. Documents signed following the will execution, such as advance medical directives and powers of attorney, will be completed in accordance with their particular requirements.

1.4.1.5.1. Mass will executions involving large numbers of people exceed the presiding attorney's and witness' reasonable capacity to control the proceeding. These mass actions thus render a will susceptible to a challenge and therefore are strongly discouraged. However, separate execution ceremonies for each individual or couple are not required. Multiple persons may execute their wills simultaneously before the presiding attorney and the required two witnesses, provided the group is not so large as to exceed the ability of the attorney and witnesses to engage with the clients to ensure they understand and properly complete the execution procedures and to respond to any questions regarding the execution process. SJAs and their staffs exercise their discretion, governed by reasonableness and maintaining customer service standards and the dignity of the process, in determining the number of document executions to

conduct simultaneously. Persons with questions about the content of their wills and related documents should be excused from the room where the execution is taking place to ensure confidentiality.

1.4.1.6. If clients have sophisticated estate planning problems or complex financial situations that exceed the professional capabilities of a legal office, then refer them to other attorneys (paragraph 1.7.).

1.4.2. Advance Medical Directives. Advance medical directives include living wills and medical powers of attorney. A living will states a person's desires regarding the termination of life support in the event of a terminal, incurable medical condition. A client uses a medical power of attorney to appoint a trusted person to make medical care decisions in the event of incompetence or inability to communicate decisions or desires. Although drafting programs such as *DL Wills* produce both living wills and medical powers of attorney, the legal assistance attorney remains responsible for reviewing these documents to ensure they effect the client's intent and are consistent with each other or otherwise create confusion about the client's desires.

1.4.2.1. Advance medical directives shall be prepared in accordance with DoDD 1350.4 and must include a statement or preamble, in form or content, substantially similar to the following:

"This is a military advance medical directive prepared pursuant to section 1044c of Title 10, United States Code. It was prepared by an attorney authorized to provide legal assistance for an individual eligible to receive legal assistance under section 1044 of Title 10, United States Code. Federal law exempts this advance medical directive from any requirement of form, substance, formality, or recording that is provided for advance medical directives under the law of a State. Federal law specifies that this advance medical directive shall be given the same legal effect as an advance medical directive prepared and executed in accordance with the laws of the State concerned."

Programs such as *DL Wills* may produce preambles for military advance medical directives substantially similar to the above. If the program used does not, insert a verbatim copy of this preamble at the top of the first-page of each advance medical directive prepared. Also, check to ensure that preambles of living wills and powers of attorney to make health care decisions cite section 1044c, and not section 1044b of Title 10, United States Code. The latter provision applies not to advance medical directives but to powers of attorney generally.

1.4.3. Powers of Attorney. Section 1044b of Title 10, United States Code, requires recognition of general and special powers of attorney prepared for persons eligible for legal assistance. Although *DL Wills* produces general powers of attorney and WebLIONS produces general and special powers of attorney, the legal assistance attorney remains responsible for reviewing the documents produced by these programs to ensure they are accurate and effect the client's intent.

1.4.3.1. Powers of attorney shall be prepared in accordance with DoDD 1350.4, and must include a statement or preamble, in form and content, substantially similar to the following:

"This is a military Power of Attorney prepared pursuant to section 1044b of Title 10, United States Code, and executed by a person authorized to receive legal assistance from the Military Services. Federal law exempts this power of attorney from any requirement of form, substance, formality, or recording that is prescribed for powers of attorney by the laws of a State, the District of Columbia, or a commonwealth, territory, or possession of the United States. Federal law specifies that this

power of attorney shall be given the same legal effect as a power of attorney prepared and executed in accordance with the laws of the jurisdiction where it is presented."

Programs and forms such as *DL Wills*; Air Force *WebLIONS*; AF Form 165, *General Power of Attorney*; and AF Form 831, *Special Power of Attorney* may produce preambles for military general or special powers of attorney substantially similar to the above. If the program used to prepare powers of attorney does not, insert a verbatim copy of the preamble set forth immediately above at the top of the first-page of each power of attorney prepared.

1.4.3.2. The Soldiers' and Sailors' Civil Relief Act (SSCRA) at 50 U.S.C. App. §591 mandates all powers of attorney for military personnel categorized as prisoners of war or missing-in-action are deemed durable for the entire period of such status.

1.4.4. Notary Services. Notary services are authorized by 10 U.S.C. §1044a, and are discussed in [Chapter 2](#).

1.4.5. Dependent Care Issues. All Air Force members with families must have family care arrangements that reasonably cover all situations, both short- and long-term, in accordance with AFI 36-2908, *Family Care Plans*. Legal assistance attorneys advise and assist clients in the drafting and execution of documents and with other preparations necessary for the effective transfer of care and custody of dependents in the event the family care plan must be executed.

1.4.6. Adoption. Legal assistance attorneys research and provide general information on state adoption laws and requirements, coordinate when appropriate with the relevant state adoption agency, and advise on questions derived from adoption documents. Attorneys, paralegals, and civilian notaries provide notarization services to assist members in the completion of adoption documents. Legal assistance attorneys also advise on the DoD's adoption reimbursement program. Under 10 U.S.C. §1052, the DoD may reimburse "qualifying adoption expenses" incurred by a service member in the adoption of a child under 18 years of age. The statute identifies the expenses that qualify for reimbursement and distinguishes those expenses the program does not cover. DoDD 1341.9, *DoD Adoption Reimbursement Policy* (July 1993), implements the statute and addresses qualifying adoptions, qualifying expenses, eligible members, and procedures for requesting reimbursements. Reimbursement is authorized up to \$2,000 per child with a maximum reimbursement to one service member or military couple not exceeding \$5,000 in any calendar year. Expenses either not qualifying for reimbursement under the DoD program or exceeding the program's reimbursement ceiling may be eligible for the adoption expenses tax credit when the member files his or her federal income tax return. Expenses reimbursed under the DoD Adoption Reimbursement program do not qualify for the adoption expenses tax credit and are not to be considered in its calculation.

1.4.7. Financial Responsibility. Air Force members, retirees, and their dependents may receive advice and assistance on personal financial responsibilities under AFI 36-2906, *Personal Financial Responsibility*, such as adequate financial support to family members and responding to allegations of paternity. Additionally, legal offices provide assistance on issues of financial responsibility under federal and state laws, including involuntary allotments/garnishments to satisfy civil debts and the Uniformed Services Former Spouses' Protection Act (see 10 U.S.C. §1408).

1.4.8. Domestic Relations. Subject to the limitations stated in paragraph [1.2.7](#), with respect to separation agreements and divorce decrees, legal assistance attorneys research applicable state laws and pro-

vide advice on marriage, dissolution of marriage or divorce, child support, child custody, property distribution, and related family law matters.

1.4.9. Soldiers' and Sailors' Civil Relief Act (SSCRA). The SSCRA, 50 U.S.C. App. §§501–593, codifies Congressional recognition of the need to protect persons in military service by suspending the enforcement of certain civil obligations. For protection under most SSCRA provisions, service members must demonstrate: 1) a financial obligation initiated prior to entering active federal service and that service materially affects the service member's ability to meet the obligation; or 2) active federal service materially affects the service member's ability to participate and preserve rights in civil judicial proceedings, mortgage foreclosures, or lease evictions. Some categories of protection include: maximum interest rates of 6% (excluding student loans); stays of judicial proceedings and reopening default judgments; limitations on the enforcement of mortgage foreclosures, installment contracts (excluding automobile leases unless otherwise provided for in the lease--legal assistance attorneys should use §590 of the SSCRA to support a member's effort to terminate an automobile lease entered prior to active duty where military service materially affects the member's ability to continue payments or otherwise honor the terms of the lease), rents, and liens; continuation of commercial life insurance policies; and reinstatement of commercial health insurance policies upon release from active duty. The SSCRA at 50 U.S.C. App. §591 mandates all powers of attorney for military personnel categorized as prisoners of war or missing-in-action are deemed durable for the entire period of such status. Army Publication 260, *Soldiers' and Sailors' Civil Relief Act Guide*, provides detailed guidance on SSCRA issues.

1.4.9.1. Legal assistance attorneys and paralegals may not file requests for stays of proceedings under the SSCRA with a civil court. Nor may legal assistance attorneys and paralegals send letters under their own signatures to a court requesting a stay of civil proceedings. These types of civil filings are outside the scope of the legal assistance program and may, if improperly handled in SSCRA cases, subject the member to the jurisdiction of the court or otherwise adversely affect the member's rights and options in the case. Legal assistance attorneys may draft or assist in drafting correspondence for the client's or relevant Commander's signature requesting or supporting a request for stay of civil proceedings.

1.4.10. Veterans' Reemployment Rights. Sections 4301 through 4333, Title 38, United States Code, the Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA) and comparable state statutes afford eligible active and reserve component members the right to return to civilian jobs when they are released from active duty. Legal assistance attorneys advise service members on USERRA eligibility, their obligations to provide appropriate notice to their employers, and their reemployment rights and benefit entitlements under USERRA.

1.4.10.1. Legal assistance attorneys should not contact service members' employers concerning relief under USERRA. This action could cause the service member to forfeit assistance from the Department of Labor's Veterans' Employment and Training Service (VETS), the federal agency responsible for enforcement of USERRA. Instead, legal assistance attorneys should refer service members experiencing employment problems or concerns deriving from their military service to the Ombudsmen Services in the National Committee for Employer Support of the Guard and Reserve (ESGR), a DoD entity, and the VETS for pursuit of relief under USERRA. Legal assistance attorneys may assist service members in preparing DOL Form VETS-1010, *Eligibility Data Form: Veterans' Reemployment Rights Program*, to open a file with VETS. Access information on

ESGR assistance at <http://www.esgr.org/> and the VETS at <http://www.dol.gov/vets/welcome.html>.

1.4.11. Casualty Affairs. Legal offices assist Casualty Assistance Representatives in providing casualty assistance to the primary next of kin of military members and retirees, in accordance with AFI 36-2002, *Casualty Services*. Casualty Assistance Representatives are responsible for counseling family members and other beneficiaries regarding rights, helping to file applications for benefits and privileges, and resolving problems and complaints. Legal assistance attorneys may provide dependents only preliminary advice on probate and settlement of estates, court appearances, preparation of inheritance tax returns, civil employment, and business matters. Since direct assistance to resolve these matters falls outside the scope of the legal assistance program, it may be necessary to refer dependents to civilian attorneys (see paragraph 1.7.).

1.4.12. Landlord-Tenant. Legal assistance practitioners review lease agreements prior to signing and propose changes to best protect the service member's interest as either tenant or landlord, especially with respect to military clauses allowing for early termination on a tenant's receipt of permanent change of station orders or reentry of a military landlord on receipt of orders to return to the property's location. Of note, ownership and renting of property as a commercial enterprise exceeds the scope of the legal assistance program, as per paragraph 1.2.5. of this instruction. Legal assistance practitioners review the particular facts and circumstances of each military landlord's situation in making this determination. Clients may also receive advice and assistance in resolving landlord/tenant disputes. Areas of particular concern include security deposits, pre- and post-lease inspections, lease terms, condition of premises, and early termination of leases.

1.4.13. Consumer Affairs. Legal assistance attorneys provide counseling on a wide range of consumer issues such as bankruptcy, consumer fraud, identity theft, retail purchases, and vehicle leases. An exceptional tool in assisting clients in this area is the Military Sentinel web site, a joint operation by the DoD and Federal Trade Commission (FTC). This site allows service members and their families to file consumer fraud and identity theft complaints on-line directly with the FTC. Military Sentinel also provides easy access to a wealth of consumer education and fraud prevention material. Access the web site at <http://www.consumer.gov/military/>. In addition, the FTC's main web site provides consumer protection educational materials and information on FTC and state consumer protection actions. Access the site at <http://www.ftc.gov/>.

#### 1.4.14. Taxes.

1.4.14.1. Under the legal assistance program, Air Force attorneys provide advice and assistance on legal matters pertaining to federal, state, and local tax problems. Examples of this type of legal assistance include responding to letters from the IRS or state tax authorities, advising on responding to audits, and assisting in non-income tax matters, like real estate taxes or personal property taxes. Bases report this type of legal assistance in WebLIONS (see paragraph 1.9. of this instruction).

1.4.14.2. Air Force tax assistance programs are command programs separate and distinct from the legal assistance program. These programs involve base volunteers preparing and filing federal and state income tax returns for those eligible to receive this assistance. Although SJAs often supervise and manage these programs at their bases, the tax assistance programs are not part of the Air Force legal assistance program. Therefore, Installation Commanders exercise discretion concerning establishment of a tax assistance program at their installations and participation of their units



and personnel in such a program. Commanders may also exercise discretion concerning the scope of assistance provided, eligible beneficiaries, and sources of support for training and electronic filing. Most Air Force bases operate individual income tax assistance programs, which include electronic filing services.

1.4.14.2.1. Air Force tax assistance programs may take advantage of the Internal Revenue Service (IRS) Volunteer Income Tax Assistance (VITA) and electronic filing programs, or other viable sources of support, to effect training of tax assistance volunteers and provision of electronic filing services at their bases. Other sources include commercially available training programs and electronic filing software.

1.4.14.2.2. Eligible beneficiaries include active duty service members and their dependents and retirees and their dependents. Additionally, Installation Commanders may authorize preparation of tax returns for federal civilian employees. In making this determination, Commanders must consider whether the resources available to the installation tax program are sufficient to support the increased demands such an extension of support would entail. Because no additional cost is incurred in the actual electronic filing, Commanders may also extend electronic-filing services to civilian employees. This provision does not create a right in federal employees for tax assistance under an installation tax program or the Air Force tax program generally. Nor are Commanders required to extend this assistance to civilian federal employees. When they seek tax assistance, federal civilian employees must adhere to applicable rules concerning use and accounting of their time.

1.4.14.3. Bases file statistics for their tax assistance programs in the Tax Program Reporting System (TPRS) at [https://aflsa.jag.af.mil/training/jaguar/tax/tax\\_home.php](https://aflsa.jag.af.mil/training/jaguar/tax/tax_home.php). Do not use WebLIONS either to input client information or tax program workload.

1.4.15. Issues that The Judge Advocate General (TJAG), Major Command (MAJCOM) SJAs, Numbered Air Force (NAF) SJAs, Commanders, or the base SJAs deem connected with personal civil legal affairs.

## **1.5. Supervisory Responsibilities.**

### **1.5.1. The Judge Advocate General (TJAG):**

1.5.1.1. Establishes and manages the Air Force Legal Assistance and Preventive Law Programs.

1.5.1.2. Communicates with the American Bar Association (ABA) and other associations TJAG deems necessary to further the legal assistance and preventive law programs.

1.5.1.3. Delegates authority to operate these programs to the Legal Assistance and Preventive Law Division, Air Force Legal Services Agency (AFLSA/JACA).

### **1.5.2. AFLSA/JACA:**

1.5.2.1. Monitors the Air Force Legal Assistance and Preventive Law Programs.

1.5.2.2. Carries out the overall administration of the Air Force Legal Assistance and Preventive Law Programs.

1.5.2.3. Gives advice on legal assistance, notary, and preventive law matters that affect Air Force personnel worldwide.

1.5.2.4. Monitors the Web-based Legal Information Online System (WebLIONS) outlined in paragraph 1.9., the *DL Wills* program, and the Tax Program Reporting System (TPRS).

1.5.3. MAJCOM, Field Operating Agency (FOA), and Direct Reporting Unit (DRU) SJAs:

1.5.3.1. Supervise functional program staffs within their Commands.

1.5.3.2. Ensure compliance with this instruction.

1.5.3.3. May add requirements for mobilization- and deployment-related legal assistance (paragraphs 1.1. and 1.3.) and may impose limits on non-mobilization- and deployment-related legal assistance (AFPD 51-5 subparagraph 12.2).

1.5.4. NAF SJAs: May add requirements for mobilization- or deployment-related legal assistance to ensure mission readiness.

1.5.5. Wing/Base SJAs:

1.5.5.1. Manage the personnel providing legal assistance and the operation of the legal assistance program at their offices consistent with this instruction.

1.5.5.2. Brief the office staff, including reservists, on the purposes of legal assistance, the base program, and this instruction. Conduct this briefing as frequently as necessary to assure the quality of the legal assistance program but at least once annually.

1.5.5.3. Communicate with local bar organizations, legal aid offices, and appropriate federal and state agencies.

1.5.5.4. Publicize the office's limits on non-mobilization- and deployment-related legal assistance.

1.5.5.5. Manage legal services volunteers (paragraph 1.8.).

1.5.6. AFLSA/JAS (Legal Information Services). AFLSA/JAS provides hardware and software support for WebLIONS.

1.5.7. AF/JAZ (Strategic Plans and Policy). AF/JAZ provides software support for the Tax Program Reporting System (TPRS).

**1.6. Ethical Responsibilities and Rules.** SJAs administer the legal assistance program in strict compliance with Air Force ethical responsibilities and rules such as TJAG Policy Memoranda TJS-2, *Air Force Rules of Professional Conduct and Standards for Civility in Professional Conduct*; TJS-5, *TJAGD Professional Responsibility Program*; and ARC-1, *Rules and Standards for Professional Conduct for Air Reserve Component Judge Advocates*. Of note, in the event of conflicts or differences between the applicable Air Force rules of professional responsibility and the equivalent state rules, the Air Force provisions will control (TJS-2). TJAG's Professional Responsibility Administrator (AFLSA/PR) serves as the dedicated focal point for professional responsibility advice and counsel. Access Professional Responsibility Program information at <https://aflsa.jag.af.mil/cgi-bin/genwebhtml.pl?jagmail=profresp>.

1.6.1. Only attorneys give legal advice. Paralegals and clerical staff members shall not provide any legal advice to a client, or render any other services to a client that constitute the practice of law unless under the direct supervision of an Air Force legal assistance attorney.

1.6.1.1. Paralegals and clerical staff members may question prospective clients to determine the subject matter of their concerns and whether it is within the scope of the legal assistance program.



They may also prepare and maintain legal documents under the direct supervision of an attorney and perform such acts as notarizations and the preparation of routine powers of attorney using approved legal office forms.

1.6.1.2. A paralegal may conduct an initial client interview, preliminary to an attorney-client meeting. During this interview, the paralegal should ascertain the general nature and pertinent facts of the client's legal problem or concern. Because of the likelihood privileged information will be discussed, this interview should occur in a confidential setting. The paralegal may provide the client with handouts or references providing basic information about laws, regulations, rules, policies and procedures that may be relevant to the client's situation.

1.6.2. Information received from a client during legal assistance, attorney work-product, and documents relating to the client are confidential. Release them only with the client's express permission, pursuant to a court order, or as otherwise permitted by the *Air Force Rules of Professional Conduct* and the *Air Force Standards for Civility in Professional Conduct* and other Air Force rules pertaining to ethical conduct and professional responsibility. Such release should only be accomplished after contacting AFLSA/JACA through the appropriate supervisory chain.

1.6.3. Judge advocates and civilian attorneys who perform legal assistance must have private offices.

1.6.4. When contacting third parties, legal assistance attorneys must avoid creating the impression that they represent the Air Force's interests in resolving the client's concerns or that the Air Force has an interest in the outcome of the matter. When writing letters on a client's behalf, do not use Air Force letterhead. Include a statement in the letter making it clear the Air Force does not represent the client in resolving the matter.

1.6.5. Legal assistance attorneys may not interfere with an existing attorney-client relationship. When a member is already represented by counsel, the legal assistance attorney ordinarily should refer the member to his or her attorney. In some cases, however, the legal assistance attorney can play a valuable supporting role for the member, such as in the identification of military-unique considerations or the interpretation and discussion of military-specific statutes, regulations, and instructions. In this situation, the legal assistance attorney may consult with the member represented by counsel provided the attorney communicates to the legal assistance attorney the desire for this support. Otherwise, advising a client already represented by an attorney, providing a "second opinion," is not permitted.

**1.7. Referrals.** The nature of a client's legal problem may exceed the competence of the initial attorney consulted or the scope of the Air Force legal assistance program. In such cases, the legal assistance attorney should refer the client to, as appropriate, another Air Force attorney, another Armed Forces legal assistance office, or civilian lawyer referral services. Follow these guidelines when making referrals:

1.7.1. For civilian criminal matters, refer military members to the appropriate military defense counsel and civilians to the local civilian criminal defense bar.

1.7.2. For matters with the potential to involve the prospective client in adverse action under the UCMJ or adverse administrative action, refer the person to the appropriate military defense counsel. As the client provided the information to the legal assistance attorney in an attorney-client relationship, the legal assistance attorney may not disclose information concerning past criminal acts or other acts of misconduct to investigators or other attorneys in the legal office who may work on a case involving this person.

1.7.3. For a prospective client seeking assistance in filing a complaint under Article 138, UCMJ, refer the person to the appropriate military defense counsel or the Office of the Inspector General.

1.7.4. For military members who are or may be the subject of court-martial charges or other disciplinary action, the appropriate military defense counsel shall coordinate any need for legal assistance with the appropriate SJA, even if the matter would ordinarily fall within the scope of legal assistance.

1.7.5. For matters in which the person has already retained a civilian attorney, refer to that civilian attorney. Serving as a source of a “second opinion” for a client already represented by an attorney is not appropriate. However, as noted in paragraph 1.6.5. of this instruction, in some cases the legal assistance attorney can play a valuable supporting role for the member represented by a civilian attorney, such as in the identification of military-unique considerations or the interpretation and discussion of military-specific statutes, regulations, and instructions. Where the civilian attorney communicates to the legal assistance attorney the desire for this support, the legal assistance attorney may consult with the client.

1.7.6. In foreign areas, with the consent of consular officials and after consultation with the national bar, if appropriate, prepare a list of attorneys in accordance with the applicable status of forces agreement or implementing instruction. Refer persons who may face charges before a foreign court to the military legal advisor (see AFI 51-703, *Foreign Criminal Jurisdiction*).

1.7.7. Referral Guidelines. It is essential that each office establish referral guidelines that are free from favoritism or other impropriety. When referring persons to other attorneys, use the following guidelines:

1.7.7.1. Referrals should be made to the source best able to assist the client in the resolution of the particular problem or concern at the earliest time. For matters exceeding the particular legal assistance attorney’s expertise, there is no need to exhaust military referrals, such as another legal assistance attorney, either active duty or reservist, or legal assistance attorneys in another military legal office, before referring a client to civilian bar referral services. The goal is to facilitate the client’s consulting with an attorney competent to provide the required assistance. Options include another attorney on the legal office staff whether civilian or military, active or reserve; another military legal office, regardless of service; and the civilian bar.

1.7.7.2. Where the client’s situation requires specialized expertise beyond the scope of the military legal assistance programs, refer to bar referral services operated by the American Bar Association (ABA) or state or local bar associations. If an organized bar or lawyer referral service does not exist in a base’s area, refer the client to a local listing of attorneys who have expressed interest in serving military clients.

1.7.7.3. Make referrals based on the knowledge of or experience with the particular military attorney, military legal assistance office, civilian bar referral service, or, in the case of locations lacking a referral service, the local legal community.

1.7.7.4. Ensure the client understands that the decision to consult with or be represented by another legal assistance attorney, or to consult with and retain the services of a civilian attorney recommended through a bar referral service, is solely that of the client. The client is free to consult with and retain any lawyer.

1.7.7.5. Make clear to the client that referral to bar referral services operated by the ABA or state or local bar associations, or to a list of local attorneys maintained by the legal office in locations

not covered by a referral service, does not constitute a federal or Air Force endorsement of any of the individual attorneys participating in these services.

#### 1.7.8. Referral Services.

1.7.8.1. The American Bar Association (ABA) and many state and local bar associations operate bar referral services. Legal assistance attorneys should familiarize themselves with the services available through these bar associations. Contact with representatives of the bar associations is encouraged to determine how the lists are compiled and maintained and what standards apply for an attorney's inclusion on the lists. Providing information of this sort to clients enhances their ability to make informed decisions about use of the referral service. Prior contact will also yield information on any special programs the bar association may operate to assist military legal assistance attorneys and military clients and ensures the bar association is willing to accept referrals of military clients.

1.7.8.1.1. *Operation Enduring LAMP* is one example of a bar referral service. In 2001, the ABA Standing Committee on Legal Assistance for Military Personnel (LAMP) launched *Operation Enduring LAMP*, a project to help organize and educate civilian attorneys who wish to provide *pro bono* legal assistance to military personnel who are mobilized for military service and their family members who will be left behind. Most state bar associations participate in *Operation Enduring LAMP*; however, each state's program differs. Therefore, SJAs are encouraged to contact the base's state bar association regarding the registration and referral of participating *Operation Enduring LAMP* attorneys. Access information on this program at <http://www.abanet.org/legalservices/helpreservists/home.html>.

1.7.8.1.2. The ABA and state and local bar associations may maintain listings of attorneys who have volunteered to provide advice and guidance to military legal assistance attorneys. For example, *Operation Stand-By* is a project of the ABA Family Law Section's Military Committee through which attorneys agree to take calls, e-mail or other correspondence from JAG officers and answer inquiries about family law issues in their state. Access information on *Operation Stand-By* and a list, by state, of the participating attorneys at <http://www.abanet.org/family/military/opstandby.doc>.

1.7.8.1.3. State and local bar associations may maintain lists of attorneys who have expressed interest in providing military clients with either *pro bono* service or service at reasonable fees.

**1.8. Legal Services Volunteers.** SJAs may accept the services of a licensed attorney, paralegal, or other legal professional to provide legal assistance under 10 U.S.C. §1044 and in accordance with 10 U.S.C. §1588(a)(5); DoDI 1100.21, *Volunteer Services in the Department of Defense*; and TJS-8, *Use of Legal Services Volunteers*. DoDI 1100.21, TJS-8 and the AFLSA/JACA web site provide detailed guidance on the process of accepting voluntary legal services and the scope and limitations of voluntary legal services. General guidance consistent with DoDI 1100.21 follows.

1.8.1. Volunteer services agreement and volunteer confidentiality agreement. All volunteers shall read and sign the appropriate part of DD Form 2793, *Volunteer Agreement for Appropriated Activities or Nonappropriated Fund Instrumentalities*. Also, legal services volunteers must be briefed on, understand, and comply with the same confidentiality requirements applicable to all members of the legal office staff, such as TJAG Policy Memorandums TJS-2, *Air Force Rules of Professional Conduct and Standards for Civility in Professional Conduct* and TJS-3, *Air Force Standards for Criminal*

*Justice.* All legal services volunteers shall read and sign the *Legal Services Volunteer Confidentiality Agreement* attached to TJAG Policy Memorandum TJS-8. Acceptance of the volunteer services and confidentiality agreements shall be acknowledged before an individual is allowed to provide volunteer services. Copies of the signed agreements should be given to the volunteer prior to commencing volunteer services.

1.8.2. When required, volunteers must be licensed, privileged, appropriately credentialed or otherwise qualified under applicable laws, regulations, or policy to provide the voluntary services involved. Prior to acceptance as a volunteer, attorneys must provide a letter of good standing from each state Bar of which they are a member.

1.8.3. Supervision and scope of legal assistance. Legal services volunteers, even if licensed attorneys, may not be permitted to provide direct, unsupervised advice to Commanders or other agency clients on matters affecting Air Force interests, or to legal assistance clients. Also, legal services volunteers cannot perform the functions of a judge advocate or other inherently governmental services, such as representing clients in an area defense counsel office. They can, however, perform paralegal-type functions or provide other legal services, including advice and assistance to legal assistance clients, if acting under the direction, supervision, and control of an Air Force military or civilian attorney. Supervisory authority with respect to volunteers will be through designation of authorized duties, training, counseling, assessment of the quality of service provided, and determinations regarding continuation of acceptance of voluntary services. The degree of supervision of volunteers will be comparable to that provided with respect to paid employees providing similar services. Examples of permissible uses include researching, drafting legal opinions for review and signature by an Air Force attorney, and helping with legal assistance matters.

1.8.4. Legal services volunteers are not employees of the United States or any instrumentality thereof, except for certain purposes relating to compensation of injuries occurring during the performance of approved volunteer services, tort claims, the Privacy Act, criminal conflicts of interest, and defense of suits arising out of legal malpractice.

1.8.5. Expenses. The Air Force may not compensate legal services volunteers. However, legal services volunteers may use dedicated legal office or desk space, equipment, supplies, computers, and telephones as needed to accomplish assigned duties. Expenses directly connected to assigned duties that are incurred off base, such as long distance telephone calls, may be reimbursed as incidental expenses. Submit Standard Form 1164, *Claim for Reimbursement for Expenditures on Official Business*, to the servicing finance office for reimbursement of incidental expenses. Installations may accept voluntary services from host-nation or third-country citizens so long as the installation determines that acceptance of voluntary services from such persons will not subject the United States to potential liability or unauthorized expenses. This includes payment of employment benefits for a volunteer due to host-nation labor or voluntary service laws, U.S.-host-nation treaties, Status of Forces Agreements, or other arrangements.

**1.9. Records/Reports. Effective 1 Jan 03,** offices must record legal assistance visits and workload in the Web-based Legal Information Online System (WebLIONS). As a web-based program, WebLIONS eliminates the requirement for base legal offices and higher headquarters to prepare and compile the annual report of legal assistance. Statistical data of each office will be available to that office and its higher headquarters through WebLIONS on demand. Offices are not permitted to employ alternative automated data management and workload tracking systems for legal assistance. (RCS: JA(A)7501) This

report is designated emergency status code C-2. Continue reporting during emergency conditions, normal precedence. Access WebLIONS at <https://lions.jag.af.mil>.

1.9.1. Offices should retain AF Forms 1175, *Legal Assistance Record*, for temporary use in the event of interruption of WebLIONS access or service. On these occasions, information recorded on the cards must be entered into WebLIONS when service resumes.

1.9.2. Do not keep formal files on legal assistance clients. Return original documents to clients as soon as possible.

**1.10. Personal Legal Readiness Briefings.** SJAs support readiness at their installations by ensuring personnel tasked for deployment at their bases are personally contacted and briefed on preparing their personal and family legal affairs for deployment. Subject areas include, but are not necessarily limited to, wills; SGLI designations; general and special powers of attorney; medical planning, including advance medical directives (living wills and medical or health care powers of attorneys), and designation of anatomical gifts; guardians or in loco parentis powers of attorney to ensure care of minor children; landlord-tenant matters; income exclusions and/or tax return filing extensions applicable to potential deployment locations; property and financial affairs management; protections under the Soldiers' and Sailors' Civil Relief Act (SSCRA); protections under the Uniformed Services Employment and Reemployment Rights Act (USERRA) for reserve personnel deploying; and ensuring important documents are maintained in safe, secure, and reasonably accessible locations.

1.10.1. According to requirements described in AFD 51-5, attachment 2, offices must report the percentage of personnel tasked for deployment who are personally contacted and briefed on their personal legal needs or who receive mobilization- and deployment-related legal assistance every 15 months. This period aligns with the standard Aerospace Expeditionary Force (AEF) cycle. Base legal offices report this information by letter, through the MAJCOM, to be received by AFLSA/JACA upon entering their AEF window for deployment.

**1.11. Software Licenses.** *DL Wills* software is currently used to prepare documents such as wills, advance medical directives, and powers of attorney, and is licensed and copyrighted by a non-governmental corporate entity. Use of the software is governed by a licensing agreement that requires a separate license for each computer the program is installed upon. The AFLSA/JACA web site provides strict guidance on license acquisitions, controls and restrictions. Base SJAs and LOMs should ensure their offices have licenses for each computer on which *DL Wills* software is installed.

**1.12. Communications.** Legal assistance practitioners may communicate directly with other legal assistance officers or paralegals. When necessary, seek guidance from your higher headquarters legal offices before contacting AFLSA/JACA.

## Chapter 2

### NOTARIAL ACTS AND OATHS

#### 2.1. Notarial Acts.

2.1.1. Federal Authority. Section 1044a of Title 10, United States Code, grants the specific categories of persons listed in paragraphs [2.1.3.](#) and [2.1.7.](#) of this instruction the general powers of a notary public and of a consul of the United States. This authority derives from the federal statute and is distinct from the notary authority created by each state's laws. Notarial acts performed under 10 U.S.C. §1044a are legally binding throughout the world for federal and non-federal purposes.

2.1.2. Role of Notary. A notary acts as an official, unbiased witness to the identity and signature of the person who comes before the notary. A notary has the authority to administer oaths and affirmations. Every notary act affects the legal rights of others. SJAs will make sure notaries do not abuse their authority.

2.1.3. Persons with Notary Authority. Under the authority of 10 U.S.C. §1044a, the following persons have the general powers of a notary public and of a consul of the United States for notary acts executed for eligible legal assistance beneficiaries:

2.1.3.1. All judge advocates, including judge advocates of the Air Force Reserve whether or not in a duty status.

2.1.3.2. Civilian attorneys, licensed to practice law in the United States, employed by the Air Force and serving as legal assistance attorneys.

2.1.3.3. All adjutants, assistant adjutants, and personnel adjutants, including reserve members on active duty or performing inactive duty training.

2.1.3.4. Enlisted paralegals, E-4 or higher, on active duty or performing inactive duty training (see paragraph [2.1.6.](#)).

2.1.3.5. Active duty Air Force personnel who satisfy **all three** of the following criteria:

2.1.3.5.1. A commissioned officer or senior non-commissioned officer (holding the rank of Master Sergeant or higher);

2.1.3.5.2. Stationed at a geographically separated unit (GSU) or remote location where no judge advocate or paralegal notary is also assigned; and,

2.1.3.5.3. Appointed in writing, by the unit's servicing general court-martial (GCM) convening authority SJA to exercise notary authority under 10 U.S.C. 1044a and this instruction.

2.1.3.6. At locations outside the United States, civilian Air Force employees appointed by the SJA servicing the base to serve as notaries under the authority of 10 U.S.C. §1044a(b)(5).

2.1.4. Individuals Eligible To Use Military Notary Services. In accordance with 10 U.S.C. §1044a, the following persons may receive notary service:

2.1.4.1. All members of the United States Armed Forces.

2.1.4.2. All other individuals eligible for legal assistance under this instruction.

2.1.4.3. All individuals serving with, employed by, or accompanying the armed forces outside the United States and outside Puerto Rico, Guam, and the Virgin Islands.

2.1.4.4. All individuals subject to the UCMJ outside the United States.

2.1.4.5. Where a document requires signatures of multiple persons, notarize only the signatures of those persons eligible for military notary services per the above four classifications.

2.1.5. Civilian Employees as State Notaries (other than civilian legal assistance attorneys). Staff Judge Advocates may designate civilian employees to serve as notaries as part of their official duties. The notarial authority created by 10 U.S.C. Section 1044a does not cover this type of designation. Therefore, any designated civilian employee must qualify as a notary under the laws of the state where he or she will perform notarial duties.

2.1.5.1. Designations of employees as notaries must be in writing and state that reimbursement for expenses is authorized. Title 5 U.S.C. Section 5945 authorizes reimbursement of commission expenses. These expenses may not exceed the actual cost of any fees, bonds, seals, perforating devices, and any other expenses actually incurred. Make reimbursements in accordance with local procedures.

2.1.5.2. Where an installation has multiple SJAs, each SJA may make this designation for his or her respective Command or agency.

2.1.5.3. As the notaries designated under this provision are reimbursed for commission expenses, they may only provide notary services for the eligible beneficiaries specified in paragraph [2.1.4.above](#).

2.1.6. E-4 Paralegals as Notaries. Staff Judge Advocates will not allow E-4 paralegals to perform notary duties until they have received proper training. This limitation means that only those E-4 paralegals who have been task-certified to perform notary acts as specified by the Career Field Education and Training Plan (CFETP) will act as notaries.

2.1.7. Non-JA Notaries at Geographically Separated Units (GSU). GCM SJAs are responsible for identifying those units where a non-JA notary should be appointed. Staff Judge Advocates are advised to appoint only the number of non-JA notaries necessary to avoid undue hardship to members at the GSU or remote site. All notary appointments must be in writing. The GCM SJA will maintain a copy of the written appointment letter for at least two years beyond the end of the notary's assignment. The GCM SJA may revoke the non-JA notary's authority at any time, with or without cause.

2.1.7.1. The base legal office that supports the GSU or remote site will provide all support to non-JA notaries. This support will include, at a minimum, training and supervision. The base legal office is responsible for notifying the GCM SJA when the non-JA notary is reassigned from the unit, an event that terminates the notary's authority.

2.1.7.2. Non-JA notaries are bound by the same rules set out for attorney, paralegal and civilian notaries under this instruction. In addition, non-JA notaries must comply with the following rules:

2.1.7.2.1. The notary shall not exercise notary authority until the servicing base level SJA has determined that the notary has been properly trained.

2.1.7.2.2. The notary may not provide legal advice. The notary may not assist another in preparing or executing legal documents, including wills, deeds, contracts, leases, affidavits, separ-



ration agreements and powers of attorney, except for completing the notary jurat on such documents.

2.1.7.2.3. The notary may only exercise notary authority while performing official duties at the duty site. The notary may not perform notary duties while in a TDY or leave status.

2.1.7.2.4. The notary's authority automatically terminates when the notary is re-assigned from the GSU or remote unit. The notary will deliver, or ensure delivery of, his or her personal notary log to the servicing base SJA. The notary seal or stamp will be retained at the duty location at which the notary worked for use by the notary appointed to succeed the departing notary. In the event a new notary is not appointed, the seal or stamp will be returned to the servicing base SJA.

2.1.8. Authenticity and Seals. When signing documents in their official capacity, notaries specify the date and location, list their title and office, and use a raised seal or inked stamp citing 10 U.S.C. §1044a (for military notaries) or state authority (for civilian employee notaries designated pursuant to paragraph 2.1.5. of this instruction).

2.1.8.1. Installations should employ a raised seal or inked stamp citing the authority of 10 U.S.C. §1044a and including the identifiers "U.S. Air Force" and "Judge Advocate." Experience with the Authentication Division of the Department of State demonstrates these identifiers are essential to acceptance of military notarizations on documents being presented to foreign governments. The issue arises most frequently in connection with international adoptions by military families. Use of the identifiers will ensure documents with military notarizations are accepted as authentic.

2.1.9. Notary Guidelines.

2.1.9.1. Before performing a notary act, verify the identity of each person whose signature you will notarize.

2.1.9.2. Do not accept any signature as genuine on the word of a third person. **The person whose act is the subject of the notary act must personally appear and sign the document before the notary.**

2.1.9.3. Administer oaths or affirmations for any sworn document. The person being sworn must appear before the notary.

2.1.9.4. Notaries should familiarize themselves with state law requirements for acknowledgement of documents. Questions or concerns should be resolved by research of the appropriate state statutes or consultation with the entity requiring the document be notarized.

2.1.9.5. Do not notarize incomplete documents. A client's assurance to add missing information subsequent to the notarization is not adequate and must not be honored. Documents must include all required information at the time of signing and notarization. Please note some documents are completed in stages, requiring the addition of information and signatures subsequent to the signatures for which notarization is sought. In such cases, ensure the document is complete to the stage in the process at which the client is seeking notary services.

2.1.9.6. Consistent with paragraph 2.1.4.5. of this instruction, notarize only the signatures of persons eligible for military notary service. The military notary program does not extend to other signators on a document not eligible for military notary service under paragraph 2.1.4. of this instruction.



2.1.9.7. Certification of a document as a true and accurate copy of the original document is not a notarial act. Such a certification requires verification of the authenticity of the document represented by the client to be the original. Only the entity that created the document or maintains the original document or electronic record as part of its official responsibilities can make this verification. Therefore, notaries and other members of the legal office staff may not certify documents as true and accurate copies of original documents which are neither created by the office nor maintained by the office as part of its official responsibilities.

2.1.9.7.1. Notaries may notarize the certification of authenticity and signature of the document custodian from the office responsible for maintaining the original document or electronic record. This act establishes the authenticity of the certification of the document or record as a true and accurate copy of the original version maintained by the responsible office. Additionally, if sufficient to meet the client's needs, the notary may notarize the signed statement of the client that a document is a true and accurate copy of the original record he or she has received and maintained. For example, clients often request legal assistance practitioners to notarize copies of a DD Form 214 or NGB Form 22 as true and accurate reproductions of the original documents. Legal office notaries may not make this certification. Specific agencies can certify a copy of a DD Form 214 as a true and accurate reproduction of the original. JACA has published guidance to the field through The Judge Advocate General's Online News Service. As another example, although a notary may not certify copies of a service member's medical records to be true and accurate, the notary may notarize the statement and signature of the medical records custodian certifying the copies to be true and accurate.

2.1.9.8. Maintain a notary log. All legal assistance notaries, both military and civilian, shall maintain a personal log of notary acts performed. The log must include the signer's name and signature, the type of document, date, and location. Military notaries take their notary logs with them when they make a PCS move, except non-JA military notaries who provide the logs to the servicing base SJA consistent with paragraph 2.1.7.2.4. of this instruction. On separation or retirement, military notaries leave the notary log at their last duty station. Civilian employee notaries must follow the relevant state law regarding disposition of notary logs. If state law is silent, civilian employee notaries moving to a new position or location in federal civil service take their notary logs with them. Retiring civilian employee notaries and those leaving government will leave their notary logs at their last office of employment.

2.1.9.9. Security of Notary Equipment. Notaries must maintain vigilance to prevent misuse, loss, or theft of notary seals, stamps, and log books. Persons not authorized to serve as notaries under this instruction shall not use or maintain notary equipment. When not in use, secure notary seals, stamps, and log books in a desk drawer or file cabinet. Each notary shall ensure his or her notary equipment is similarly secured at the end of each duty day.

**2.2. Oaths and Affirmations.** The United States Code authorizes military members to administer oaths and affirmations. SJAs will ensure that their staffs are familiar with the following:

2.2.1. Title 10 U.S.C. Section 936(a), which grants specific people the authority to administer oaths and affirmations for military administration, including military justice.

2.2.2. Title 10 U.S.C. Section 936(b), which authorizes specific people to administer oaths and affirmations when necessary to perform their duties.

2.2.3. Title 10 U.S.C. Sections 502 and 1031, which authorize United States Armed Forces commissioned officers to administer oaths of enlistment (section 502) and oaths of enlistment or appointment in the armed forces (section 1031).

### **2.3. Notary Restrictions.**

2.3.1. Compensation. Under 10 U.S.C. §1044a(c), no fee may be paid to or received by any person for the performance of a notarial act authorized under the legal assistance program.

## Chapter 3

### PREVENTIVE LAW PROGRAM

**3.1. Purpose.** No legal assistance program can succeed without a vigorous preventive law program. Educating Commanders, members, and their families on legal issues prevents legal problems and reduces the time and resources needed to resolve legal problems. Preventing legal problems enhances Command effectiveness and readiness, especially during periods of mobilization and deployment of personnel. Effective preventive law activities require full communication and cooperation among Air Force legal office staff members, Commanders, and base personnel, both uniformed and civilians.

**3.2. Scope.** Every base will have an active preventive law program. The SJA implements the program for his or her installation or organization. All attorneys have a responsibility to integrate preventive efforts into legal assistance consultations and presentations to base audiences on legal programs.

3.2.1. Preventive law programs focus on education and recommend preventive measures in legal areas where the Air Force has a direct interest in the outcome as well as those likely to impact base readiness and morale. At a minimum, include the following subject areas:

3.2.1.1. Mobilization and Deployment Preparation. Educate members on their personal legal needs to ensure readiness for mobilization and deployment. Examples include preparing their personal and family legal affairs for the demands of and dislocations caused by mobilization and deployment, training on their rights under the SSCRA and the USERRA, and disseminating information through all effective media on other matters pertaining to legal readiness.

3.2.1.1.1. Stress to Commanders the importance of making predeployment planning a priority within their units. For example, in accordance with DoDD 1350.4, *Legal Assistance Matters*, all Commanding Officers shall urge military personnel to seek legal counsel regarding wills, living wills, advance medical directives, and powers of attorney well before mobilization, deployment, or similar activities. Although not specifically cited in DoDD 1350.4, First Sergeants hold a similar responsibility. Ultimately, the decision to prepare and execute any of these documents must remain the free and voluntary act of the member. However, Commanders and First Sergeants play a vital role in highlighting and emphasizing the importance of seeking legal assistance as part of readiness preparations.

3.2.1.2. Commander/First Sergeant Awareness. Educate Commanders, First Sergeants, and staff agency chiefs on the full range of legal services provided by the legal office (not just legal assistance matters); the advantages to the Command or organization of timely use of these legal services; and all legal matters affecting the installation, including, as examples, fraud, waste and abuse, standards of conduct, environmental issues, contract issues, military justice issues, and claims matters. Communicate with Commanders, First Sergeants, and staff agencies on the status of legal services. Advise unit Commanders and First Sergeants of the legal office's availability to present informational briefings concerning the scope of the legal assistance program and preventive law measures at Commanders' and First Sergeants' seminars, Commanders' Calls, staff meetings, base committee meetings, and newcomers' orientations.

3.2.1.3. Promote service member awareness of the importance of recognizing legal issues and seeking timely legal advice. Promote service member awareness of the importance of considering the legal consequences of their actions prior to signing legal documents such as purchase agree-

ments, contracts, leases, and separation agreements. Ignoring legal issues or concerns and signing documents without advice on their terms and significance leads to legal problems later.

3.2.1.4. Identify common legal problems encountered by service members and family members. With its capability to provide statistical reports on demand, WebLIONS is an excellent resource for developing this information. Develop materials providing information and guidance aimed at preventing or minimizing service member and family member exposure to these potential legal problems.

3.2.1.5. Maintain vigilance to identify novel legal concerns, such as new consumer scams. Promptly develop and disseminate educational materials to help the base community make informed decisions and avoid potential legal problems.

3.2.1.6. Encourage the following base-wide activities:

3.2.1.6.1. Submission of articles for base newspapers, daily bulletin boards, and military legal publications on current legal assistance issues.

3.2.1.6.2. Distribution of handouts or pamphlets on preventive law measures at legal offices or other appropriate offices, such as the Family Support Center and squadron orderly rooms.

3.2.1.6.3. Development and maintenance of legal office web sites that provide office operating hours and contact information and that provide or link to current preventive law materials.

3.2.1.6.4. Presentation of preventive law lectures and seminars.

3.2.1.7. Law Day is observed each year on the first day of May to draw attention to the principles of justice and the practice of law, by an annual Proclamation of the President of the United States in accordance with Public Law 87-20 of April 7, 1961, as amended. Each year, in advance of 1 May, TJAG announces a Law Day theme. Staff Judge Advocates and preventive law officers join thousands of national organizations, businesses and schools and participate in innovative Law Day activities such as a high school mock trial, a middle school art and essay contest, or a community question and answer panel discussion.

3.2.1.8. Encourage legal office attorneys to participate in state or local bar associations to gain information on support programs available through these associations to benefit military clients and preventive law efforts and to educate civilian attorneys on the military in general and military legal programs in particular.

3.2.1.9. Seek support from bar associations to provide no-fee or reduced-fee legal services for service members and family members, particularly those with low incomes.

3.2.1.10. Encourage participation by local attorneys and state and local bar associations in programs sponsored by the ABA's Standing Committee on Legal Assistance for Military Personnel (LAMP), such as *Operation Enduring LAMP*, and the Military Committee of the ABA's Family Law Section, such as *Operation Stand-By*.

3.2.1.11. Tax Assistance. The Internal Revenue Service operates the Volunteer Income Tax Assistance (VITA) Program. If approved by base Commanders, establish an active, aggressive, well-publicized tax assistance program as outlined in [1.4.14.2.](#)

**3.3. Program Management.** See AFPD 51-5, Section C, for a full description of responsibilities in the program.

3.3.1. MAJCOM SJAs supervise the programs within their Commands.

3.3.2. To manage the base-level preventive law program, base SJAs appoint a Chief of Preventive Law or preventive law officer, charged with developing and implementing educational initiatives as a primary duty. In performing these duties, the appointed leader should review preventive law materials disseminated by AFLSA/JACA, which are maintained on its web site (see paragraph 3.5.1. of this instruction). Also, he or she should communicate with other military legal offices, particularly those in the same state, higher headquarters legal offices, and appropriate federal, state, and local agencies, such as bar referral services and consumer protection agencies.

**3.4. Communication.** All judge advocates may communicate directly with each other and with relevant organizations and persons about preventive law matters.

**3.5. Preventive Law Resources.**

3.5.1. AFLSA/JACA's web site provides information on legal assistance subject areas covered under the legal assistance program, field guidance, and preventive law updates. Access the site at:

[https://aflsa.jag.af.mil/GROUPS/AIR\\_FORCE/JAC/jaca/index.html](https://aflsa.jag.af.mil/GROUPS/AIR_FORCE/JAC/jaca/index.html).

3.5.2. WebFLITE. AFLSA/JAS's WebFLITE includes a "Web Links" page that provides access to a wide-range of Air Force and legal assistance internet and intranet web sites. WebFLITE also provides helpful links to other agencies, statutes and regulations, and specific legal assistance subject areas. Access these links at: <https://aflsa.jag.af.mil/flite/links.php>.

**3.6. Forms Prescribed.**

3.6.1. AF Form 165, **General Power of Attorney.**

3.6.2. AF Form 831, **Special Power of Attorney.**

3.6.3. AF Form 1175, **Legal Assistance Record.**

**3.7. Forms Adopted.**

3.7.1. DOL Form VETS-1010, **Eligibility Data Form: Veterans' Reemployment Rights.**

3.7.2. DD Form 2793, **Volunteer Agreement for Appropriated Activities or Nonappropriated Fund Instrumentalities.**

3.7.3. SF 1164, **Claim for Reimbursement for Expenditures on Official Business.**

THOMAS J. FISCUS, Major General, USAF  
The Judge Advocate General

**Attachment 1****GLOSSARY OF REFERENCES AND SUPPORTING INFORMATION*****References***

5 U.S.C. 5945, *Notary Public Commission Expenses*

10 U.S.C. 502, *Enlistment Oath: Who May Administer*

10 U.S.C. 936, *Art. 136. Authority to Administer Oaths and to Act as Notary*

10 U.S.C. 938, *Art. 138. Complaints of Wrongs*

10 U.S.C. 1031, *Administration of Oath*

10 U.S.C. 1044, *Legal Assistance*

10 U.S.C. 1052, *Reimbursement of Adoption Expenses*

10 U.S.C. 1408, *Payment of Retired or Retainer Pay in Compliance with Court Orders*

10 U.S.C. 1588, *Authority to Accept Certain Voluntary Service*

10 U.S.C. 12731, *Age and Service Requirements*

38 U.S.C. 4301-4333, *Employment and Reemployment Rights of Members of the Uniformed Services*

50 U.S.C. App. 501-593, *Soldiers' and Sailors' Civil Relief Act*

AFI 36-2906, *Personal Financial Responsibility*

AFI 36-2908, *Family Care Plans*

AFPD 51-5, *Military Legal Affairs*

ARC-1, *Rules of Professional Conduct for Air Reserve Component Judge Advocates*

Army Pub. 260, *Soldiers' and Sailors' Civil Relief Act Guide*

DoDI 1100.21, *Voluntary Services in the Department of Defense*

DoDD 1341.9, *DoD Adoption Reimbursement Policy* (Jul 93)

DoDD 1350.4, *Legal Assistance Matters* (Apr 01)

DoDI 1400.32, *DoD Civilian Workforce Contingency and Emergency Planning Guidelines and Procedures*

DoDI 3020.37, *Continuation of Essential DoD Contract Services During Crises*

P.L. 87-20, *Law Day*, 7 April 1961

TJS-2, *Air Force Rules of Professional Conduct and Standards for Civility in Professional Conduct*

TJS-3, *Air Force Standards for Criminal Justice*

TJS-8, *Legal Services Volunteer Confidentiality Agreement*

**Attachment 2****DUAL REPRESENTATION AUTHORIZATION**

Legal assistance attorneys may use the following form to inform clients of the parameters of, and to secure their consent to, dual representation. Each client should independently read and sign a letter to confirm that each wishes to be dually represented by a single attorney.

Dear Client:

You and your spouse have indicated that you wish to meet with an attorney together to discuss and execute both of your wills and related documents. There exists the potential for conflicts of interest to arise between spouses concerning the division and distribution of their property. For this reason, each may retain separate, independent counsel at the outset to avoid the possibility that advice given to one of you is influenced by the representation of the other. Where both spouses express the desire to be represented by a single attorney, it is the practice of this office to raise the potential for conflicts of interest with you and require your independent consent prior to proceeding with dual representation. Your signature below will confirm the following:

1. You and your spouse have requested the same legal assistance attorney represent each of you in advising on and preparing your wills and related documents.
2. You recognize that you and your spouse's wills and related documents need not be uniform. They may be entirely unique from each other in content. Each of you will review your documents prior to execution to ensure they reflect your individual wishes.
3. The scope of this representation will include the following:
  - Analysis of the assets owned by each of you at the time of your marriage, including consideration of the fair market value of such property and the manner in which the title was then held;
  - Analysis of all property now owned by each of you, including consideration of its fair market value, the manner in which title to such property is now held, and a categorization of such property as separate, marital, community, or quasi-community property;
  - Discussion concerning the manner in which you wish to dispose of any property you may have the power to dispose of at the time of your death; and
  - Preparation of the documents necessary to accomplish the desired disposition of your property.

4. You are aware that during the course of the representation, disagreements may arise between you and your spouse regarding ownership and disposition of property.
5. Difference of opinion regarding the disposition of property does not, in and of itself, prevent an attorney from representing both husband and wife. However, during the course of the representation, conflicts of interest between you and your spouse may arise that might preclude me from further representing either of you.
6. If a conflict of interest does occur, and it is of such a nature that I believe it impossible for me to ethically perform services for either of you, I will immediately cease all representation of both of you in this matter and advise that you both obtain independent counsel.
7. You agree that there will be complete and free disclosure of all information I receive from either of you within the course of representing you and your spouse. You further agree that such information shall not be confidential between you and your spouse regardless of whether I obtain such information when you and your spouse are both present or when only one of you is present. This disclosure authorization includes any conferences that may have taken place before the date of this letter.

Very Respectfully,

SIGNATURE BLOCK

Legal Assistance Attorney

I, (print your name) \_\_\_\_\_, have read and understand the foregoing letter and consent to being represented by \_\_\_\_\_, our legal assistance attorney, together with my spouse, \_\_\_\_\_, in the creation of our individual testamentary instruments. I likewise consent to the free disclosure and exchange between my spouse and I of information received by said attorney within the scope of his/her representation of us in the same.

Signed the \_\_\_\_ day of \_\_\_\_\_, 20XX

\_\_\_\_\_  
Client



**Attachment 3****STANDARD OPERATING PROCEDURE FOR EXECUTING WILLS**

The following procedure, or one covering substantially the same points, is recommended as a standard for the execution of wills. This procedure meets the requirements for execution of military testamentary instruments, the standard for the execution of wills in the United States Air Force.

A. Present for the execution should be the following:

(1) the testator/testatrix

(2) two witnesses, who must be persons who have no interest, vested or contingent, in the property disposed of by the will or in the testator's/testatrix's estate in the event of intestacy. An attorney presiding over the execution ceremony may NOT act as a witness. Under 10 USC §1044d(c)(3), the two witnesses must be "in addition to the presiding attorney."

(3) the presiding attorney - 10 USC §1044d requires a military testamentary instrument to be "executed in the presence of a military legal assistance counsel acting as presiding attorney."

(4) notary - as the notary will notarize the signatures of the witnesses, the notary cannot serve as one of the witnesses.

a. Execution of the document as a military testamentary instrument does not require use of a military notary acting under 10 USC §1044a.

b. The statute does not preclude the presiding attorney from notarizing the will and other documents. Taking that approach would require notarization under the authority of 10 USC §1044a, with use of the appropriate captions in the documents. However, if questions are raised later concerning how the will was executed, this approach risks a significant problem. If an attorney served as notary, particularly a JAG, he or she will likely have PCSed or maybe even left the Air Force by the time questions come up. The witnesses will likely fall into similar situations. They will be difficult to find at best. Even when found, because they may have executed the will years ago, they will rely on distant memories of how the process was accomplished. In contrast, because civilian notaries often work in the same office for years they are most familiar with a particular office's will execution practices and are best placed to respond to questions concerning the execution of the documents.

B. If the will consists of more than 1 page, the pages should be fastened together securely. The will should specify the exact number of pages of which it consists (e.g., number each page at the bottom "1 of 3," "2 of 3," "3 of 3"). This page numbering does not include the self-proving affidavit, unless it has been incorporated as part of the will. The self-proving affidavit should, however, be fastened to the will.

C. The testator/testatrix should read the will and the self-proving affidavit in their entirety and the legal assistance attorney should ensure understanding of all terms prior to the execution.

D. The presiding attorney and/or notary should ask for and examine the identification cards of the testator/testatrix and witnesses.

E. The attorney or notary presiding at the execution ceremony should ask the testator/testatrix the questions from the section below entitled "Will Execution Requisites."

F. Assuming appropriate responses to the questions, the testator/testatrix then initials and dates in the margin at the bottom of each page of the will except the page including the testator's/testatrix's signature at the end of the will. This step assures identification and prevents subsequent addition and substitution of pages. The testator/testatrix also signs in the appropriate space at the end of the will. The witnesses should be seated or standing in a position to observe the signing and/or initialing.

G. The attorney or notary presiding at the execution ceremony asks the witnesses the listed questions from the section below entitled "Will Execution Requisites."

H. Each witness should read and then declare that the attestation clause is a true and correct statement.

I. Each witness then initials and dates in the margins in the same area as the testator/testatrix (again, this step assures identification and prevents subsequent addition and substitution of pages) **and** signs in the appropriate places at the end of the will. The witnesses also read and sign the self-proving affidavit. The witnesses' printed or typed name and rank (if military) and printed or typed duty address should be included under or next to their signatures.

### **WILL EXECUTION REQUISITES**

The presiding attorney or notary asks each Testator/Testatrix the following questions. The witnesses must be assured the Testator/Testatrix understands the questions and responds to them consistent with the intent to execute the document as his/her last will and testament.

For executions involving multiple clients, substitute the phrase “each of you” for “you” in each question and request the clients to answer aloud and make the appropriate nod for affirmative or negative.

- (1) Do you (state full name of testator/testatrix) declare in the presence of (state the names of the witnesses) that this document is your will?**
- (2) Are you at least 18 years of age?**
- (3) Do you consider yourself to be of sound mind?**
- (4) Have you read the will in its entirety and do you fully understand its terms?**
- (5) Do you have any additions or corrections you desire made to the will?**
- (6) Does the will as drafted represent your intentions as to how you wish your property to be distributed in the event of your death?**
- (7) Have you prepared and are you executing this document voluntarily?**
- (8) Do you feel you have been under any sort of duress, coercion, or undue influence as you discussed and provided information for the preparation of the will or now as you get ready to sign the will?**
- (9) Do you publish and declare this document to be your last will and testament?**
- (10) Do you desire that we (state the names of the witnesses) witness your signature and execution of this will?**

#### **Questions to the witnesses:**

- (1) Does the testator/testatrix appear to be at least 18 years of age?**
- (2) Does the testator/testatrix appear to be of sound mind?**
- (3) Does he/she appear to understand the nature of his/her actions?**
- (4) Does he/she appear to be acting under duress or coercion?**